

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:
CHOXI.COM, Inc.,

Debtor.

Chapter 11

Case No.: 16-13131-SCC

TRACY KLESTADT, in his capacity as Plan
Administrator of the estate of Choxi.com, Inc.,

Plaintiff,

v.

DEEPAK AGARWAL, MELINA AGARWAL
F/K/A MELINA ASH, SHEELA AGARWAL,
VIPESH AGARWAL, VISHAL AGARWAL,
IFTIKAR AHMED, DANIEL DEPINA, DYIA
IRREVOCABLE TRUST, DEPINA
CONSULTING, LLC, AND TECHSYS
MARKETING, INC.,

Defendants.

Adv. No. 18-01794-SCC

DEFENDANTS' MOTION TO DISMISS

PLEASE TAKE NOTICE, that upon the accompanying Memorandum of Law in Support of the Motion to Dismiss by Defendants Deepak Agarwal, Melina Agarwal, Sheela Agarwal, Vipesh Agarwal, Vishal Agarwal, Daniel Depina, the DIYA Irrevocable Trust, and Depina Consulting, LLC ("Defendants"), seeking entry of an Order dismissing the Complaint (Dk. No.1), filed by Plaintiff Tracy Klestadt, in his capacity as Plan Administrator of the estate of Choxi.com, Inc., and the declarations and exhibits attached thereto, Defendants hereby move this Court for an order pursuant to Federal Rules of Civil Procedure 12(b)(5) and 12(b)(6), and Federal Rules of Bankruptcy Procedure 7004 and 7012 dismissing the Complaint with prejudice.

PLEASE TAKE FURTHER NOTICE, that a Proposed Order is also attached as an Exhibit 1 herewith.

Dated: March 1, 2019

Respectfully submitted,

/s/ Steven H. Holinstat
Steven H. Holinstat
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036-8299
(212) 969-3000

Jeff J. Marwil (*pro hac vice pending*)
Brooke H. Blackwell (*pro hac vice pending*)
Proskauer Rose LLP
70 West Madison, Suite 3800
Chicago, IL 60602-4342
(312) 962-3550

Safraz W. Ishmael (*pro hac vice pending*)
Christopher J. Deck (*pro hac vice pending*)
Proskauer Rose LLP
One International Place
Boston, Massachusetts 02110-2600
(617) 526-9600

*Counsel for Defendants Deepak Agarwal,
Melina Agarwal, Sheela Agarwal, Vipesh
Agarwal, Vishal Agarwal, Daniel Depina,
DIYA Irrevocable Trust, and Depina
Consulting, LLC*